Supreme Court, U.S.
FILED
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No.

IN THE

Supreme Court of the United States

In re

JOHN C. GARRISON

Petitioner

PETITION FOR EXTRAORDINARY WRIT

JOHN C. GARRISON,
IN PRO SE
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54pp

INTRODUCTORY STATEMENT

As a result of extraordinary circumstances occurring at the trial level, pro se petitioner has been effectively intimidated from appealing his civil rights case to the 11th Circuit Court of Appeals. Writ of mandamus and prohibition is sought as relief.

QUESTIONS PRESENTED

1. Whether the District Judge and Magistrate have engaged in an illegal effort to suppress petitioner's case and to deprive him of due process.

2. Whether the District Court disregarded the mandates of this Court so as to intimidate petitioner from pursuing further his civil rights case.

3. Whether the Magistrate Judge exceeded his authority under 28 U.S.C. § 636(b)(1) by determining recommendations on the disposition of petitioner's motion for summary judgment and the defendant's motion to dismiss for failure to state a claim upon which relief can be granted.

4. Whether the District Judge acted in dereliction of his duties in the delegation, supervision, and control of the Magistrate's actions.

PARTIES TO THIS PETITION

JOHN C. GARRISON
Petitioner

INTERNAL REVENUE SERVICE
Opposing Party

Name of trial court:

THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
Tallahassee Division

Case No. 4:00CV376-WS

Presiding:

WILLIAM STAFFORD
District Judge

WILLIAM C. SHERRILL, JR.
Magistrate Judge

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IN THE SUPREME COURT OF THE
UNITED STATES

No.

John C. Garrison, Petitioner

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

John C. Garrison, the petitioner herein, in pro se, prays that a writ of mandamus and prohibition issue to the United States District Court for the Northern District of Florida on its determination and final order in petitioner's case entered on December 22, 2000.

ORDERS AND OPINIONS BELOW

The December 11, 2000 Magistrate's Report and Recommendation of the United States District Court for the Northern District of Florida, which herein is included as reference and is printed in Appendix A hereto, *infra* pages 26-27. The December 12, 2000 Order of the said Magistrate denying petitioner's request for oral argument, which herein is included as reference and is printed in Appendix A hereto, *infra* page 37. The December 22, 2000 Judgment of the United States District Court for the Northern District of Florida, which herein is included as reference and is printed in Appendix A hereto, *infra* pages 38-39.

JURISDICTION

The Order of the District Court was finally entered on December 22, 2000. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1651(a).

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 636(b)(1):

> Notwithstanding any provisions of law to the contrary-
>
> (A) a judge may designate a magistrate to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action. A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate's order is clearly erroneous or contrary to law.

26 U.S.C. § 212:

> *Expenses for production of income.* In the case of an individual, there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year
>
> (1) for the production or collection of income;
>
> (2) for the management, conservation, or maintenance of property held for the production of income; or
>
> (3) in connection with the determination, collection, or refund of any tax.

STATEMENT OF THE CASE

1. NATURE OF THE CASE

Petitioner, a retired person with legal training, is, in his retirement, a writer in the field of politics and theology. Prior to his retirement, petitioner's full-time employment was in the construction industry.

In 1997, while engaged in graduate seminary studies, petitioner worked part-time to help finance his theological education. This work consisted of selling construction labor to electrical contractors. Specifically, the work involved the sale of petitioner's personal labor (i.e., the application to construction projects of his physical energy, skills, time, and expertise) in exchange for compensation.

Petitioner's case involves a suit for refund challenging an Internal Revenue Service ("IRS") rule with respect to the personal labor he has sold. Applying the mandates of this Court, the case takes up the issue of whether or not labor is income producing property and whether or not the costs of such labor are deductible for income tax purposes.

The IRS holds that labor sold in exchange for compensation is not property or income producing property. For this reason, the IRS has ruled that the costs of labor are not deductible under 26 U.S.C. § 212. This statute reads in part as follows:

> *Expenses for production of income.* In the case of an individual, there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year
> (1) for the production or collection of income;
> (2) for the management, conservation, or maintenance of property held for the production of income...

The original precedent establishing in case law the IRS rule on labor is found in *Reading v. Commissioner*, 70 T.C. 730, (1978), aff'd. 614 F2d 159 (8th Cir. 1980).

In the *Reading* case, the U.S. Tax Court ruled as follows:

> Of course we recognize the necessity for expenditures for such items as food, shelter, clothing, and proper health maintenance. They provide both the mental and physical nourishment essential to maintain the body at a level of effectiveness that will permit its labor to be productive. We do not even deny that a certain similarity exists between the "cost of doing labor" and the "cost of goods sold" concept. *But the sale of one's labor is not the same creature as the sale of property.* *Id.*, a-t 733-734 (Emphasis added).

Moreover, the Tax Court also ruled that labor, not being property, was actually only "behavior performed by human beings in exchange for compensation" (*id.*, at 733).

In challenging the legality of the IRS rule on labor, petitioner has based his arguments on certain precedents and mandates from this Court. Essentially, petitioner has argued as follows:

A. That in *Brushaber v. Union Pacific R.R.*, 240 U.S. 1 (1916), and in *Bromley v. McCaughan*, 280 U.S. 124 (1929), this Court established a "rule of excise" with respect to the taxation of income under the Sixteenth Amendment.

First, the rule of excise states that an income tax is an excise; that this is a fact of law; and that an income tax is to be enforced as an excise:

> [T]he conclusion reached in the *Pollock* Case [*Pollock v. Farmers' Loan & Trust Co.*, 157 U.S. 429 (1895)] did not in any degree involve holding that income taxes generically and necessarily came within the class of direct taxes on property, but, on the contrary, recognized the fact that taxation on income was in its nature an excise entitled to be enforced as such. *Brushaber*, *id.*, at 16-17.

Second, the rule of excise defines an excise as being essentially a tax on a use of property owned by a taxpayer: "this Court has consistently held, almost from the foundation of the government, that a tax imposed upon a particular use of property or the exercise of a single power over property incidental to ownership, is an excise." *Bromley, id.*, at 136.

B. That since an excise is concerned only with property, and particularly in its use for deriving income, the *Brushaber-Bromley* rule of excise limits the meaning of "source" in the language of the Sixteenth Amendment to those objects that are of the nature of property. *Brushaber-Bromley.* "Congress shall have power to lay and collect taxes on incomes, from whatever *source* derived." U.S. CONSTITUTION, Amendment XVI. (Emphasis added).

C. Relying on *Brushaber-Bromley*, petitioner has argued in the alternative:

First, that if labor is not property or income producing property, as the IRS holds, then, according to the *Brushaber-Bromley* rule, the proceeds from the sale of labor cannot be subject to an income tax (or excise) since an excise is concerned only with proceeds that arise *from a use of property.*

But, second, and in the alternative, that if the proceeds from the sale of labor are indeed lawfully taxable as income—*as petitioner has repeatedly conceded that they are*—then labor must be both property and income producing property since, according to *Brushaber-Bromley*, an income excise demands the presence of property as the constitutional "source" from which income is derived.

D. That the Tax Court ruling in *Reading*, stating that labor is merely "behavior" and not property, represents an arbitrary ruling, a *fiat* that finds no precedent in previous law.

E. That the IRS notion of labor as an income producing *non-property* finds no explicit support in any decision of this Court.

F. That neither is there such support to be found in the Tax Code itself.

G. That contradicting the IRS and the Tax Court on the nature of labor, the following represents long-standing precedent established by this Court: "Property is everything which has an exchangeable value, and the right of property includes the power to dispose of it according to the will of the owner. *Labor is property, and as such merits protection.*" *Slaughter-House Cases*, 83 U.S. 36, 127 (1873), Justice Swayne dissenting. (Emphasis added). "It has been well said that, *'The property which every man has in his own labor*, as it is the original foundation of all other property, so it is the most sacred and inviolable...' " *Butchers' Union v. Crescent City Livestock*, 111 U.S. 746, 757 (1884), Justice Fields concurring. (Emphasis added).

H. That the same language on the property nature of labor is found in *C.J.S.*, s.v., "Property," § 12, and *Words and Phrases*, s.v., "Property (Labor)."

I. That since to hold specific employment or to follow a chosen profession is the same as to labor (or sell labor) in that employment or profession, this Court's decision in *Greene v. McElroy*, 360 U.S. 424 (1959), essentially established that labor is included with one's employment or profession as property protected by the Fifth Amendment: "the right to hold specific private employment and to follow a chosen profession free from unreasonable governmental interference comes within the 'liberty' and 'property' concepts of the Fifth Amendment." *Id.*, at 492.

J. That the sum of all the above necessarily draws the conclusion that the *Brushaber-Bromley* rule of excise demands that the costs of labor must be tax deductible under 26 U.S.C. § 212.

Petitioner repeatedly, in several of his pleadings, applied his argumentation in the alternative. It is found, for example, in Point #4 of his motion for summary judgment, filed on November 6, 2000, and in a supplement objecting to the Magistrate's Report and Recommendation. See, Appendix A, *infra* pages 22, 35.

2. PROCEDINGS IN THE LOWER COURT

A. Mandates from this Court (cited above) on which petitioner supported his claims were systematically disregarded and given no effect by the District Court.

B. Contrary to the limits of power given to magistrate judges under 28 U.S.C. 636(b)(1), *supra* page 2, a magistrate judge was allowed to determine recommendations on petitioner's motion for summary judgment and on the defendant's motion to dismiss for failure to state a claim upon which relief can be granted. In doing this, the Magistrate took on a direct decision-making role in the final determination of the said motions, thus violating 28 U.S.C. 636(b)(1).

C. Disregarding the mandates of this Court as to their distinguishing relevance in petitioner's case, the language of the Magistrate's Report and Recommendation gave petitioner's case a grotesque and erroneous construction. The case was equated with those frivolous "tax protest" cases repeatedly sanctioned and held in high contempt by the Appellate Court for the 11th Circuit. *E.g., Biermann v. C.I.R.*, 769 F.2d 707 (11th Cir. 1985); *Waters v. Commissioner*, 764 F2d. 1389 (11th Cir. 1985); *McNair v. Eggers*, 788 F.2d 1509 (11th Cir. 1986). Appendix A, *infra* pages 26-27.

D. To craft the desired characterization of petitioner, the Magistrate Judge purposely selected the first element of petitioner's alternative argument and deliberately ignored the second. As already stated, petitioner in the second element of his argument repeatedly conceded that the proceeds from his labor are indeed taxable as income but insisted that his labor was property. Yet, misconstruing and taking the first element out of the context of the second, the Magistrate Judge charged that petitioner was saying, in an absolute sense, that the proceeds from his labor are not taxable as income. *Id.*.

E. Acting contrary to 28 U.S.C. 636(b)(1), and disregarding the mandates of this Court on which petitioner's motion for summary judgment relied, the

Magistrate Judge recommended that the said motion for summary judgment be denied. *Id.*.

F. Acting contrary to 28 U.S.C. 636(b)(1), and disregarding the mandates of this Court on which petitioner's case relied, the Magistrate Judge recommended that defendant's motion to dismiss the case under Federal Rules of Civil Procedure, Rule 12(b)(6), be granted. *Id.*

G. Given its Report and Recommendation, the Magistrate denied the request for oral argument that petitioner had filed for the purpose of defending his claims. *Id.*, *infra* page 37.

H. Acting in dereliction of the duties of his office, the District Judge disregarded the limits of power in 28 U.S.C. 636(b)(1) and the mandates of this Court when he adopted without question the legally flawed Magistrate's Report and Recommendation. *Id.*, *infra* pages 38-39.

I. Petitioner's objections to the Magistrate's Report, calling attention to the mandates of this Court and of their relevance to his case, were disregarded and given no effect by the District Judge. Petitioner's objections are embodied in three separate pleadings that he timely filed. These pleadings are entitled (A) "Objection to Findings and Recommendations," (B) "Points to be Made in Oral Argument," and (C) "Supplement to Objection to Findings and Recommendations." *Id.*, *infra* pages 28-36.

J. Agreeing with the Magistrate's characterization of petitioner's claims, the District Judge went on (A) to grant the defendant's motion to dismiss; (B) to dismiss petitioner's case as frivolous, while identifying it as a civil rights case; and (C) to deny petitioner's motion for summary judgment. An emergency request for subpoena and impounding of IRS records relevant to petitioner's case was also denied. *Id.*, *infra* page 38-39.

REASONS FOR GRANTING THE WRIT

1.
WRIT IS IN AID OF THIS COURT'S APPELLATE JURISDICTION

This Court is undoubtedly aware of the long-held understanding found stated in *United States v. U.S. District Court*, 334 U.S. 258, 264 (1948): "[It is] a high function of mandamus to keep a lower tribunal from interposing unauthorized obstructions to enforcement of a judgment of a higher court." More to the point, the same principle was expressed ten years later by Justice Marshall when he wrote citing from *Baltimore & Ohio R. Co. v. United States*, 279 U.S. 781, 785 (1929):

> "When a lower federal court refuses to give effect to, or misconstrues our mandate, its action may be controlled by this court, either upon a new appeal or by writ of mandamus....It is well understood that this court has power to do *all that is necessary* to give effect to its judgments." *Connor v. Coleman*, 440 U.S. 612, 624 (1979) (Emphasis added).

As these concerns make evident, this Court has a vested interest in seeing to it that its judgments and mandates are taken seriously by lower tribunals. Given this, it is proper, and indeed necessary, that whenever this Court is disregarded in its pronouncements, this Court must act quickly to let it be known by every lower tribunal that this Court will not tolerate disobedience or usurpation of its power. A writ of mandamus wields the necessary power to do this.

When a District Court acted in the past against a judgment of this Court, this Court stated that the District Court's error "*should be rectified without delay*, and we think that the proper means for accomplishing this is by mandamus." *United States v. Haley*, 371 U.S. 18, 20 (1962) (Emphasis added). In *McCullough v.*

Cosgrave, 309 U.S. 634, 635 (1940), this Court also directed a District Court judge to vacate its order and retry cases expediently.

Thus, it is only through having an appellate jurisdiction which can issue mandamus—such as this petition calls for—that this Court can exercise power expeditiously to control any lower tribunal that disregards its rule. Of this mandamus power, it was said that it "protects the appellate jurisdiction which might be otherwise defeated and extends to support an ultimate power of review, though it not be immediately and directly involved...In that category will often fall cases involving issuance of mandamus *requiring the lower court to enforce the judgment of the appellate court.*" *U. S. v. U.S. District Court, id.*, at 263 (Emphasis added).

Since, in this petition for mandamus, this Court sits as the "appellate court," the mandamus being requested here is in aid of this Court's appellate jurisdiction. In the instant case, it is the judgments of this Court that have been disregarded. So it would be proper for this Court's appellate jurisdiction to respond.

As explained under "Statement of the Case," *supra*, important mandates and precedent established by this Court were invoked by the petitioner in support of his claims. None of them were given effect or regard by the District Court. In view of this, the District Court defied the authority of this Court, calling, "*without delay*," for the exercise of this Court's supervisory control. *United States v. Haley, id.*, at 20.

2.

EXCEPTIONAL CIRCUMSTANCES EXIST

With respect to issuing an extraordinary writ, this Court has said that "only exceptional circumstances amounting to a 'usurpation of power' will justify the invocation of this extraordinary remedy." *Will v. United States*, 389 U.S. 90, 95 (1967). The condition of "usurpation of power" exists in the instant case. This

is evident from the fact that the District Court has substituted its own authority and power and displaced as irrelevant the authority and power of this Court. It has achieved this to accomplish its own private ends.

This is not all. By comparing petitioner's case—dependent as it is on the rulings of this Court—to the bizarre cases of frivolous tax protesters, the District Court has in effect lowered the value of the pronouncements of this Court to that of the ludicrous and bizarre.

3.
APPLICATION TO APPELLATE COURT IS FRAUGHT WITH EXTRAORDINARY RISK TO PETITIONER

A. BACKGROUND HISTORY

The dilemma the petitioner faces is tied up with his discovery and experience that regardless of how substantive is the basis from which he argues, and regardless of the federal circuit in which he argues his issue on labor, the courts in their judgments have invariably suppressed a full airing of what petitioner has actually argued. In other words, after three attempts in three different federal circuits, petitioner has yet to receive a truthful assessment of what he has said and an honest discussion of the key legal evidence he has advanced to support his claims.

In the instant case, for example, it has been shown how a District Court in the 11th Circuit has failed to even mention the fact that petitioner has repeatedly invoked this Court's rule of excise, *supra*, and that this is the main foundation on which he has based everything he has argued. For the District Court, it is as if the rule does not even exist. The court has chosen instead to take out of context, quite deliberately and selectively, certain elements in petitioner's alternative argument and use them to craft together a ludicrous distortion of what petitioner has claimed. Thus, a fair assessment has been obstructed and suppressed

through a practice of intentional distortion and "stonewalling."

Petitioner's original effort to raise his issue on labor in federal court took place in the 9th Circuit in 1990-1991. The case was originally filed in District Court in San Diego, California, where petitioner resided at the time. After his case was dismissed there, it went on appeal before the 9th Circuit Court of Appeals. After failing there, it ended finally at this Court in 1991 where *certiorari* was denied. See, *Garrison v. United States*, 90-2 U.S.T.C. ¶ 50,431 (S.D. Cal. 1990), aff'd. 930 F2d 920 (Table) 1991, WL 59431 (9th Cir. 1991), *certiorari denied* (U.S. Supreme Court, Oct. 7, 1991, No. 90-1956).

In the 9th Circuit, the pivotal point on which petitioner's case relied was the issue of whether labor was constitutionally protected property and whether petitioner's labor had been wrongly classified as *non-property*. Petitioner's main contention was that such a classification failed to meet the requirements of an equal protection test established by this Court in *Walters v. City of St. Louis*, 347 U.S. 231 (1954).

In *Walters*, this Court essentially stated that while equal protection does not require identity of treatment, it nevertheless requires that a tax classification bringing about unequal treatment be such that it "[1] rest on real and not feigned differences, [2] that the distinction have some relevance to the purpose for which the classification is made, and [3] that the different treatments be not so disparate, relative to the difference in classification, as to be wholly arbitrary." *Id.*, at 237.

Petitioner contended that the IRS classification on labor violated all three elements of the *Walters* test and stressed that the primary violation was on the first element. The classification rested on the feigned difference that labor is *not property*.

The IRS countered with a motion to dismiss, insisting that the decision in *Reading* had settled the matter —labor is *not* property. Petitioner objected and countered by arguing that the *Reading* rule on labor was

unprecedented and arbitrary. To support his contention, he presented those opposing precedents from this Court and other legal authorities (cited above) affirming the view that labor is indeed a form of constitutionally protected property.

The District Court, here again, by a process of suppression through stonewalling, ignored the opposing evidence that petitioner presented and went on to grant the IRS its motion to dismiss. See, Appendix A, *infra* pages 40-42.

On appeal, the Appellate Court followed suit and essentially rubber-stamped the lower court's decision. However, moderating its judgment, the Appellate Court resisted an IRS effort to have petitioner sanctioned. In this regard, the Court said that petitioner "did not violate any laws, and never attempted to obstruct or delay the tax authorities." *Id.*, *infra* pages 43-46. While these words were welcome, they were small comfort for the betrayal petitioner felt over being suppressed and denied due process.

Petitioner's second effort to raise his issue on labor took place in the 7th Circuit, while he was in Chicago engaged in seminary studies. The case was filed on October 11, 1996 in District Court at Chicago, Illinois. *Garrison v. United States*, Docket # 96 C 6659 (1996).

Petitioner filed his case in the 7th Circuit with the hope that the courts there would extend to him the fair treatment he failed to receive in the 9th Circuit. This time, petitioner raised several separate arguments based on statutory law, but he also included the argument based on the rule of excise, *supra*, that he has raised in the instant case. Petitioner's main objective was to prove that he was lawfully entitled to treat as tax deductible the costs of his labor. The statutes that he argued from were 26 U.S.C. § 162 ("trade or business" expenses), § 212, clause (1) ("production of income" expenses), and § 212, clause (2) ("conservation of income producing property" expenses).

The IRS countered with a motion to dismiss, stating that petitioner's claims had already been proven wrong

in the 9th Circuit (*Garrison*, 1991) and that 26 U.S.C. § 262 precluded the deductibility of "personal expenses." Petitioner objected and sought to show that his case in the 9th Circuit was flawed and that 26 U.S.C. § 262 was not an absolute bar to the deduction of personal expenses since the statute has an "exception" clause: *"Except as otherwise expressly provided in this chapter,* no deduction shall be allowed for personal, living or family expenses." (Emphasis added).

Again, by a process of suppression through stonewalling, the District Court ignored all of petitioner's arguments in defense of his claim. The District Court then went on to dismiss the case with prejudice. *Id., infra* page 47. This outcome discouraged petitioner to a point in which he could not bring himself to pursue the matter any further. The experience also led him to believe that it was useless to try since it appeared that, regardless of what he did to try to get his day in court and be heard, the courts were bent on frustrating him at every turn.

It also appeared that the IRS lawyers had nothing to be concerned about with regard to petitioner's challenges. The systematic way in which the courts were suppressing petitioner's cases made it appear that they could be counted on without fail to assist the IRS in its own defense.

So when petitioner came into court raising his issue, he did not face one opponent, but two—the judge and the IRS. The judge alone would see to it that petitioner would get defeated. The whole experience was profoundly humiliating; it was something the petitioner felt he did not deserve. Even law-breakers get better treatment, and, as the 9th Circuit had conceded, petitioner was no law-breaker.

Here was a case of the courts protecting the government against its own powerless citizens. If there is such a thing as IRS abuse, the courts in these kinds of actions have not helped to dampen it. Instead, they have helped to embolden it. This has given the IRS a feeling of impunity, a confidence that the courts can be

relied on to provide cover—as is evident in the instant case.

Four years have passed since the 1996 effort. And while petitioner finds himself yet again frustrated by a federal court in Tallahassee, he no longer comes to the courts naïve. Based on his previous experiences, he expects the probability of being again unjustly suppressed, barring this Court's intervention. But he makes this attempt because he feels a sense of duty to all that is truthful and just. It is one last final effort for this cause. After this, win or lose, petitioner will put the matter out of his life once for all.

B. THE COURTS AND "TAX PROTEST" CASES

Because his case has been branded by the District Court as being in the class of so-called "tax protest" cases, the impact these cases have had on the federal courts has now become part of the dilemma that petitioner faces. Petitioner has come to believe that there is a connection between the impact of tax protest cases on the courts and the reason why lower courts, including appellate courts, have not and will not give petitioner's arguments a fair hearing, regardless of the circuit or court in which he files and regardless of how substantial are his arguments.

It may be that the tax protest movement has now largely subsided. Petitioner is not sufficiently informed on this aspect to know one way or the other. But he is certain that, in any case, the movement is not dead. Yet, dead or alive, the point being stressed is that, starting from at least the decade of the 70's, now about 30 years, the tax protest movement has in fact had an impact on the courts throughout the federal system. And the effect of that impact is still very much in the courts today. In one negative way or another, and to one degree or another, it virtually has affected the disposition of every judge.

Throughout the federal system one reads of how indignant courts have been toward tax protesters who

have inundated the system. These protesters have come claiming in various ways that the proceeds from labor (or wages) are not income and that such proceeds are therefore not taxable as income. The grounds on which these people have based their claims have included private beliefs and even bizarre notions. Some, for example, have said that they should not be taxed because they are not "persons" liable for taxes but rather "freemen" and "unenfranchised individuals" who are not subject to taxation, or that they should not be taxed because the IRS has no jurisdiction over them. *Biermann, id.*, at 708; *McNair, id.*, at 1510.

The courts have resisted tax protester litigants, ostensibly because they waste the courts' time with frivolous arguments. In the 11th Circuit, for example, in the case of *Waters v. C.I.R.*, 764 F.2d 1389 (11th Cir. 1985), we find the Appellate Court vigorously affirming with sanctions a Tax Court judgment that spoke with great frustration and high contempt toward tax protesters: "petitioner is yet another in a seemingly unending parade of tax protesters bent on glutting the docket of this Court and others with frivolous and groundless claims." *Id.*, at 1389.

But beyond an issue of frivolous wasting of time, there is another reason—not usually mentioned by the courts—why tax protester litigants are systematically and routinely given harsh treatment by the courts. It is because there is a pervasive attitude among federal judges, including appellate judges, that amounts to a kind of "judicial jingoism" with respect to the income tax as a system.

Whether this attitude existed before the tax protest movement developed or whether it rose and grew as a "knee-jerk" reaction to the movement is unclear. What seems clear is that the attitude has existed along with the tax protest movement and it has influenced the way judges have dealt with the protesters themselves.

There are two elements to the jingoist attitude. The first element is an uncritical, blind allegiance to the

tax system. The mere suggestion that there might possibly be something wrong constitutionally with the tax system is seen as preposterous and absurd. Anyone who would advance such a thought is perceived as an actual or potential troublemaker and as someone to be held suspect.

The second element of the jingoist attitude is a firm determination to resort to any measure that will effectively suppress anyone who comes to the courts looking, sounding, or smelling like a tax protester and challenging the constitutionality of the tax system. The two elements of this judicial mind-set surfaced in the 8th Circuit Court of Appeals in the *Reading* case. Following is how the Court expressed it:

> We have repeatedly rejected attacks on the constitutionality of the income tax laws; taxpayers claims of unconstitutionality are without merit. *Id.*, 614 F.2d at 160.

In this statement, the 8th Circuit referred to attacks on the "tax laws." But this is a sweeping statement referring not only to the tax laws in the books, but also, and especially, to the tax laws as they are expressed through rule making and enforcement. Under this frame of mind, the tax system as a whole is presumed *jingoistically* as utterly constitutional.

The jingoist attitude has bred in judges a kind of paranoia which looks at anyone even suspect of being a tax protester as virtually an enemy of the state and thus worthy to be suppressed and denied due process. In fact, those who are suspect are even considered to be inviting harsh treatment by simply having and expressing their beliefs.

It is into the midst of this judicial mood and mentality that petitioner has walked in. Thus, he is only now beginning to realize why he is being routinely and systematically suppressed and denied due process. To the courts, petitioner in the instant case sounds and smells too much like a troublemaker of the tax pro-

tester type. He is therefore fair game for routine judicial reprisal.

And if petitioner advances arguments that cannot be assailed, but only evaded, then, in the eyes of the courts, all the more reason why petitioner must be suppressed. For if his arguments were to prove correct, and there is, after all, something wrong constitutionally with the tax system, then such a development would put the courts in an unacceptable and awkward position.

After many years of being convinced of the utter constitutionality of the tax system, and after many years of grinding down tax protesters through the legal system because they had a different view, now the courts would have to admit that tax protesters had a legitimate complaint after all, though, to prove it, they went about it the wrong way. This would implicate the courts too heavily in a negative way.

So apart from the role that jingoism and paranoia may play, this may yet be another or different reason why, in the eyes of the courts, petitioner cannot be allowed to win under any circumstance. It is better that the constitutional and civil rights of one insignificant individual—the petitioner—be sacrificed than that the court system as a whole be exposed to the possibility of public outrage. Judges are under pressure not to betray or break ranks with the system. They have to stick together and cover for each other. So for the courts, it is more expedient that Garrison be sacrificed.

The courts have warned in advance that anyone raising tax protester type arguments can expect trouble from the courts. In the *Waters* tax protest case, for instance, the Appellate Court for the 11th Circuit said that it had warned tax protest litigants "that the continued advancing of long-defunct arguments invites sanctions." *Id.*, at 1390.

It is to this 11th Circuit Appellate Court, steeped as it is with tax protest paranoia and jingoism, that petitioner in the instant case must go to appeal his case.

Obviously, the District Court in Tallahassee knew this and it appears that it has set up petitioner deliberately to meet the wrath of the 11th Circuit when he goes there.

Being branded by the lower court as a frivolous litigant of the contemptible tax protest kind, petitioner would come to the Appellate Court already under a heavy cloud of suspicion. This is just what he needs to provoke the Court's paranoia. Needless to say, this has effectively chilled and intimidated petitioner from taking his case on appeal. If he should be unjustly treated by the 11th Circuit and sanctions be imposed on him, there is no guarantee that this Court will take up the issue and provide relief. He has been here before over the same issue, and to no avail.

CONCLUSION

Wherefore, petitioner respectfully prays that a writ of mandamus and prohibition would issue, including ordering the District Court to vacate its judgment and to retry the case in light of this Court's mandates invoked by petitioner. In the alternative, petitioner requests whatever remedy this Court deems just and proper for the case.

Respectfully submitted,

John C. Garrison, in Pro Se
982 W. Brevard St. #B6
Tallahassee, FL 32304
(850) 577-3002

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
Tallahassee Division

JOHN C. GARRISON	)	
	)	
Plaintiff	)	
	)	
v.	)	Case No. 4:00CV376-WS
	)	
UNITED STATES	)	
(Internal Revenue Service)	)	
	)	
Defendant	)	
	)	

SEPARATE STATEMENT OF MATERIAL FACTS IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

PLAINTIFF submits the following separate statement of material facts and reference to evidence, pursuant to Local Rule 56.1(A) of this Court, in support of plaintiff's motion for summary judgment:

POINT #1

The facts of this case are as stated in the complaint and plaintiff has met all administrative requirements for commencing this action.

SUPPORTING EVIDENCE

Complaint, pp. 1-2, pars. (1) through (6). Admitted by defendant's failure to controvert within the 6 months provided by law (26 U.S.C. 6532).

POINT #2

The Supreme Court has ruled that taxation on income is an excise, that it is to be enforced as such, and that an excise is a tax on a use of property owned by a taxpayer.

SUPPORTING EVIDENCE

Complaint, pp. 3-4, pars (1) through (4).

POINT #3

Federal courts in the 8th and 9th circuits have ruled that the sale of one's labor is not the same thing as the sale of property and that, as such, labor is not an income producing property within the meaning of the Tax Code. Given this, and given the Supreme Court's definition of income tax as excise (Point #2 above), it is then a necessary conclusion that the proceeds from plaintiff's use of his non-property labor are not subject to an income tax as excise.

SUPPORTING EVIDENCE

Complaint, pp. 6-8, pars. (12) through (17).

POINT #4

With respect to the alternate relief prayed for in the complaint, the Supreme Court considers labor to be constitutionally protected property. It also considers "gain" derived from labor as "income" within the meaning of the Sixteenth Amendment. Given this, and given the Supreme Court's definition of income tax as excise (Point #2 above), it is then a necessary conclusion that the Supreme Court considers labor to be an "income producing property" within the meaning of the

Sixteenth Amendment and of those laws pursuant to the Sixteenth Amendment. This requires the "cost of labor sold" [e.g., "food, shelter, clothing, and proper health maintenance" (*Reading v. Commissioner*, 70 T.C. at 733-734 (1978)] to be counted equally as deductible expenses as the "cost of goods sold" (*id.*, at 733-734).

SUPPORTING EVIDENCE

Complaint, pp. 5-6, pars. (6) through (10). *Doyle v. Mitchell Bros. Co.*, 247 U.S. 179, 185 (1918), "income may be defined as the gain derived from capital, *from labor*, or from both combined." Emphasis added. (For copy of this case citation, see next page). See also, 26 U.S.C. 212.

Respectfully submitted,

s/John C. Garrison
John C. Garrison, in Pro Se
982 W. Brevard St., #B6
Tallahassee, FL 32304
(850) 577-3002

Filed: November 6, 2000

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
Tallahassee Division

JOHN C. GARRISON	)	
	)	
Plaintiff	)	
	)	
v.	)	Case No. 4:00CV376-WS
	)	
UNITED STATES	)	
(Internal Revenue Service)	)	
	)	
Defendant	)	
	)	

REQUEST FOR ORAL ARGUMENT

PLAINTIFF, John C. Garrison, hereby requests oral argument in this case pursuant to N.D. Fla. Loc. R. 7.1 (D) and for a duration of no more than 15 minutes for the purpose of addressing the following concerns:

It has come to plaintiff's mind, based on past experience, that he should not and must not presume that his written pleadings before this Court are sufficient to make his position clearly understood by the Court. Plaintiff fears that as a single individual and *pro se* litigant with limited court experience, he stands the real danger of being misunderstood and unjustly overwhelmed by the might of the United States government that is now arrayed against him. Plaintiff further believes that only through oral argument, supplemented by written pleadings, can he minimize the likelihood of being misunderstood, justly have his day in court, and not have his case unduly prejudiced.

For these reasons, plaintiff requests that this Court allow the oral argument here requested.

Respectfully submitted,

s/John C. Garrison
John C. Garrison, in Pro Se
982 W. Brevard St., #B6
Tallahassee, FL 32304-7735
(850) 577-3002

Filed: December 8, 2000

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
Tallahassee Division

JOHN C. GARRISON	)	
	)	
Plaintiff	)	
	)	
v.	)	Case No. 4:00CV376-WS
	)	
UNITED STATES	)	
(Internal Revenue Service)	)	
	)	FILED
Defendant	)	00 DEC. 11
	)	CLERK

REPORT AND RECOMMENDATION

Plaintiff, proceeding *pro se*, filed a complaint and paid the court's filing fee. Docs. 1, 2. Thereafter, the complaint was served on the defendant. Docs. 3, 4, 5. Defendant filed a motion to dismiss, doc. 12, and supporting memorandum of law, doc. 13, and Plaintiff has responded. Docs. 14, 15. His responses have been considered. Plaintiff also has a summary judgment motion pending. Doc. 6.

Plaintiff alleges that he is due a refund from the government because income received from his labor in the construction industry is not taxable as income. Doc. 1. Essentially, he claims that because his labor was not "income producing property," it is not taxable. *Id.* The Sixteenth Amendment to the United States Constitution gives Congress the power "to lay and collect taxes *on incomes, from whatever source derived, ...*" U.S. CONST. Amend. XVI. Section 1 of Title 26 authorizes the imposition of an income tax on individuals, and "taxable income" is defined as "gross income minus the deductions allowed by" law. 26 U.S.C. § 63. "Gross income" specifically includes "[c]ompensation for services, including fees, commissions, fringe bene-

fits, and similar items." 26 U.S.C. § 61(a)(1). The claim is frivolous and has been repeatedly sanctioned by the Eleventh Circuit. *Biermann v. C.I.R.*, 769 F.2d 707 (11th Cir. 1985); *McNair v. Eggers*, 788 F.2d 1509 (11th Cir. 1986).

In light of the foregoing, it is respectfully RECOMMENDED that defendant's motion to dismiss, doc. 12, be GRANTED, that Plaintiff's complaint, doc. 1, be DISMISSED as frivolous, and that all other pending motions be DENIED as moot.

IN CHAMBERS at Tallahassee, Florida, this 11th day of December, 2000.

s/William C. Sherrill, Jr.
WILLIAM C. SHERRILL, JR.
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
Tallahassee Division

JOHN C. GARRISON	)	
	)	
Plaintiff	)	
	)	
v.	)	Case No. 4:00CV376-WS
	)	
UNITED STATES	)	
(Internal Revenue Service)	)	
	)	
Defendant	)	
	)	

PLAINTIFF'S OBJECTION TO
FINDINGS AND RECOMMENDATIONS

Pursuant to the provision for filing objections to this Court's REPORT AND RECOMMENDATION entered on December 11, 2000, plaintiff, with all due respect to this Court, hereby objects for the following reasons:

1. Generally, and at the very least, plaintiff believes that the findings and recommendations in the above mentioned REPORT make evident an unfortunate misunderstanding by this Court of the actual issue raised by the plaintiff.

2. At the very worst, they give the chilling appearance of this Court having already joined the government defendant in its pattern of evasion, disregard of Supreme Court rulings, and misconstruction of facts, setting up a prelude that provides a semblance of justification for rushing quickly to callously disregard the constitutional rights of the plaintiff through an unjust dismissal of his complaint. Needless to say, this would not be a lawful, professional, or acceptable way for any court of law to mete out fair and impartial justice.

3. Moreover, plaintiff believes that a denial of his filed request for oral argument has substantially con-

tributed to this Court's seemingly unfair; uncritical, preferential treatment of defendant's arguments, resulting in recommendations unjustly prejudicial to plaintiff's interests.

4. Plaintiff believes that unless an opportunity is given him through oral argument to clearly explain the distinctions of his position *based on Supreme Court rulings*, he will not have received from this Court a fair hearing or trial. The result will then be an arbitrary decision and an unconscionable denial of justice to the plaintiff.

For the reasons above given, plaintiff requests that this Court grant him and not deny an opportunity to argue his case orally. In oral argument, plaintiff proposes to show why an accurate understanding of the actual claim he makes demonstrates (1) that plaintiff does not actually deny in any absolute sense that the proceeds from his labor are taxable as income, this notwithstanding superficial readings to the contrary, but (2) that such a claim follows the Supreme Court's interpretation of Sixteenth Amendment taxation on income [*Brushaber v. Union Pacific R.R.*, 240 U.S. 1, at 16-17 (1916)] and (3) that such a claim is therefore to be distinguished from the frivolous claims made in *Biermann v. C.I.R.*, 769 F.2d 707 (11TH Cir. 1985) and *McNair v. Eggers*, 788 F.2d 1509 (11th Cir. 1986).

For this Court's reference, a brief enlargement of these points to be made in oral argument is found in a separate pleading entitled "POINTS TO BE MADE IN ORAL ARGUMENT" filed and served together herewith.

Respectfully submitted,

s/John C. Garrison
John C. Garrison, in Pro Se
982 W. Brevard St., #B6
Tallahassee, FL 32304-7735
(850) 577-3002

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
Tallahassee Division

JOHN C. GARRISON	)	
	)	
Plaintiff	)	
	)	
v.	)	Case No. 4:00CV376-WS
	)	
UNITED STATES	)	
(Internal Revenue Service)	)	
	)	
Defendant	)	
	)	

POINTS TO BE MADE IN ORAL ARGUMENT

Following is a brief enlargement of those points mentioned in PLAINTIFF'S OBJECTION TO FINDINGS filed and served together herewith. Though not necessarily the only points to be made in oral argument, these are the main points to be raised in response to this Court's REPORT AND RECOMMENDATION entered on December 11, 2000:

RECOMMENDATION #1

This Court has recommended that plaintiff's claim is without remedy in light of Sixteenth Amendment language stating that Congress has power "to lay and collect taxes on incomes, from whatever source derived..." U.S. CONST. (See REPORT, page 2).

OBJECTION

With all due respect, plaintiff points out that this Court is cognizant of the fact that the U. S. Supreme Court reserves to itself the right to be the final arbiter

and interpreter of what constitutional language actually means. Accordingly, the meaning of constitutional language is not on its face necessarily self-evident since it is subject to interpretation by the Supreme Court.

By interpreting Sixteenth Amendment taxation on income as an excise [*Brushaber v. Union Pacific R.R.*, 240 U.S. 1, at 16-17 (1916)], and an excise as a tax on a use of property owned by a taxpayer [*Bromley v. McCaughan*, 280 U.S. 124, at 136 (1929)], the Supreme Court has circumscribed the Sixteenth Amendment word "source" as being not absolute in its meaning, but limited to any "source" which is of the nature of property. (See Complaint, pp. 3-5, for a more detailed showing of this).

Hence, relying on this Supreme Court ruling on the nature of Sixteenth Amendment taxation on income, plaintiff has contended that the proceeds from the use of his labor can be taxable *only if his labor is property* (*id.*, *Brushaber* and *Bromley*). They cannot, in other words, be taxable if labor is *non-property*, since, according to the Supreme Court, an income excise is concerned only with uses of property. (See Complaint, pp. 3-5).

Given this, the plaintiff in fact concedes that the proceeds from the use of his labor are indeed lawfully subject to an income excise, but only with the understanding that the Supreme Court considers labor to be property, and therefore income producing property (see Complaint, pp. 5-6 and Motion for Summary Judgment, Point #4 of Separate Statement for a fuller showing of this).

It is therefore the Supreme Court's decisions in *Brushaber* and *Bromley* that the plaintiff substantially relies on to support his claim. Moreover, it will be noted that this substantial material fact was evaded by the Court in its REPORT and by the defendant in its motion to dismiss. Accordingly, this Court would be acting arbitrarily and with abuse of power if these Supreme Court rulings invoked by the plaintiff continue

to be deliberately evaded and disregarded by this Court and this case is dismissed as a result.

RECOMMENDATION #2

This Court has recommended that plaintiff's claim is identical to those frivolous tax protester claims made in *Biermann v. C.I.R.*, 769 F.2d 707 (11TH Cir. 1985) and *McNair v. Eggers*, 788 F.2d 1509 (11th Cir. 1986). (See REPORT, page 2).

OBJECTION

With all due respect, plaintiff points out that in the *Biermann* and *McNair* cases, plaintiffs invoked bizarre and frivolous notions, not legitimate authority, on which to base their claims. The *Biermann* and *McNair* cases are therefore to be distinguished from the instant case since, here, plaintiff has invoked Supreme Court rulings in *Brushaber* and *Bromley* to support his claim.

Since rulings made by the Supreme Court can hardly be called frivolous or bizarre, plaintiff's claims based on such rulings are not frivolous. On the other hand, dismissing this case through a deliberate disregard of these Supreme Court rulings on which the plaintiff relies would not only be an affront and defiance against the Supreme Court but also a treating of its rulings as frivolous pronouncements not worthy of note and a committing of an egregious miscarriage of justice against the plaintiff. No federal court of justice worthy of the name, sworn to uphold the Constitution, and with a solemn duty to follow Supreme Court rulings, and protect citizens against government abuse can condone or participate in such an act.

Moreover, plaintiff has shown that, unlike what is true in *Biermann* and *McNair*, he does not in any absolute sense claim that the proceeds from the use of his labor are not taxable as income. He merely qualifies his claim following the guidelines with respect to

property established by the U. S. Supreme Court in *Brushaber* and *Bromley*.

For the reasons above given, plaintiff prays this Court not to dismiss this case and to grant plaintiff's request for oral argument so as to maximize the likelihood of a just and fair resolution to this case.

Respectfully submitted,

s/John C. Garrison
John C. Garrison, in Pro Se
982 W. Brevard St., #B6
Tallahassee, FL 32304-7735
(850) 577-3002

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
Tallahassee Division

JOHN C. GARRISON	)	
	)	
Plaintiff	)	
	)	
v.	)	Case No. 4:00CV376-WS
	)	
UNITED STATES	)	
(Internal Revenue Service)	)	
	)	
Defendant	)	
	)	

SUPPLEMENT TO PLAINTIFF'S OBJECTION
TO FINDINGS AND RECOMMENDATIONS

Plaintiff, for the sake of a potential record on appeal, submits this Supplement to his Objection to Findings and Recommendations filed and served on December 14, 2000. This pleading is filed at this time in light of having just received from this Court—subsequent to plaintiff's aforesaid December 14 filing—a separate order entered on December 12, 2000 denying plaintiff's request for oral argument.

With regard to its "Report and Recommendation," this Court will note that plaintiff's specific objections to the said Report are found briefly noted in "Plaintiff's Objection to Findings," but more enlarged in his pleading entitled "Points to be Made in Oral Argument." Both of these pleadings were filed and served together on December 14, 2000, prior to receiving in the mail the order denying request for oral argument.

In this case, which now appears to be of first impression, the additional point made below has already been made in the complaint and in the plaintiff's motion for summary judgment. But, *for the sake of the record*, there may now be a need to repeat it as a mat-

ter of important emphasis since an opportunity to do so in oral argument has been denied:

This Court will note that both in the complaint and in the motion for summary judgment ("MSJ"), the plaintiff has argued in the alternative. He has, first of all, argued that on the basis of the Supreme Court decisions in *Brushaber v. Union Pacific R.R.*, 240 U.S. 1 (1916), and *Bromley v. McCaughan*, 280 U.S. 124 (1929), the proceeds from the use of one's labor *cannot* be subject to an income tax (or excise), *if it is in fact true*, as the IRS holds, that labor is *not* property. But, in the alternative, plaintiff has also argued that if the proceeds from labor are indeed taxable as income—as 26 U.S.C. 61(a)(1) seems to point out—then, according to the Supreme Court's "rule of excise" in the *Brushaber* and *Bromley* cases, labor *has* to be both property and income producing property. This would necessitate the conclusion that the IRS ruling on labor (i.e., that labor is not property) is erroneous and needs to be struck down as such (*id.*, *Brushaber* and *Bromley*). See Complaint, p. 5; MSJ, Separate Statement, Point #4, p. 2.

In this regard, it is significant to note that the notion of labor as non-property finds no explicit textual support anywhere in the Tax Code or in any Supreme Court decision. In actual fact, the notion first arose as an unprecedented ruling by the U.S. Tax Court in the case of *Reading v. Commissioner*, 70 T.C. 730, (1978). Thus, this ruling in *Reading* was asserted without legal precedent to support it and, indeed, *against long-standing precedent established by the Supreme Court! Slaughter-House Cases*, 83 U.S. 36, at 127 (1873); *Butchers' Union v. Crescent City Livestock*, 111 U.S. 746, at 757 (1884); *Greene v. McElroy*, 360 U.S. 424, at 492 (1959). See Complaint, pp. 5-7.

Respectfully submitted,

s/John C. Garrison
John C. Garrison, in Pro Se
982 W. Brevard St., #B6
Tallahassee, FL 32304-7735
(850) 577-3002

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
Tallahassee Division

JOHN C. GARRISON	)	
	)	
Plaintiff	)	
	)	
v.	)	Case No. 4:00CV376-WS
	)	
UNITED STATES	)	
(Internal Revenue Service)	)	
	)	FILED
Defendant	)	00 DEC. 12
	)	CLERK

REFERRAL AND ORDER

REQUEST FOR ORAL ARGUMENT filed by Plaintiff on December 8, 2000, referred to Magistrate Judge Sherrill on December 11, 2000.

Accordingly, it is ORDERED this 12th day of December , 2000:

The relief requested is DENIED as moot in light of report and recommendation entered this date.

s/William C. Sherrill, Jr.
WILLIAM C. SHERRILL, JR.
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
Tallahassee Division

JOHN C. GARRISON	)	
	)	
Plaintiff	)	
	)	
v.	)	Case No. 4:00CV376-WS
	)	
UNITED STATES	)	
(Internal Revenue Service)	)	
	)	FILED
Defendant	)	00 DEC. 22
	)	CLERK

ORDER ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Before the court is the magistrate judge's report and recommendation docketed December 11, 2000. See Doc 18. The magistrate judge recommends that Defendant's motion to dismiss be granted.

The parties have been furnished copies of the report and recommendation and have been afforded an opportunity to file objections pursuant to Title 28, United States Code, Section 636(b)(1). Upon *de novo* review of the record, including Plaintiff's objections and supplemental objections to the report and recommendation, the court has determined that the report and recommendation should be adopted.

Accordingly, it is ordered:

1. The magistrate judge's report and recommendation is ADOPTED and incorporated by reference into this order.
2. Defendant's motion to dismiss (doc. 12) is GRANTED, and this civil rights case is DISMISSED as frivolous.
3. Plaintiff's motion for summary judgment (doc. 6) is DENIED.

4. Plaintiff's emergency request for subpoena and impounding of evidence (doc. 15) is DENIED.
5. The clerk is directed to enter judgment of dismissal accordingly.

DONE AND ORDERED this 22nd day of December 2000.

s/William Stafford
WILLIAM STAFFORD
SENIOR UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JOHN C. GARRISON	)	
	)	
Plaintiff	)	
	)	
v.	)	No. 90-0264-JLI (CV)
	)	
UNITED STATES	)	
	)	FILED
Defendant	)	JUL. 25, 1990
	)	CLERK

MEMORANDUM DECISION AND ORDER

The motion to dismiss of defendant United States of America ("U.S.A.") came on for hearing on July 23, 1990, at 10:30 a.m., before the Honorable J. Lawrence Irving, District Judge. Plaintiff John C. Garrison appeared in *propria personam*, and Greg Addington appeared in behalf of the defendant.

Having considered all pleadings, declarations and the written and oral arguments of counsel and law in support thereof, the court hereby grants the defendant's motion to dismiss.

FACTS

In April of 1987, plaintiff John C. Garrison, a construction electrician, timely filed his 1987 income tax return and paid the tax which he computed was due. Soon thereafter he filed an amended income tax return (claim for refund) which claimed various additional deductions resulting in a lesser tax liability. These deductions included basic support and subsistence costs, including food, shelter, health maintenance, and transportation costs to and from his workplace.

Because the Internal Revenue Service ("I.R.S.") disallowed the refund which the plaintiff requested, the

plaintiff filed this action on March 2, 1990. He claims the I.R.S. has violated the Equal Protection Clause of the U.S. Constitution by allowing businesses—but not individuals—to deduct operating expenses from taxable income. An individual, the plaintiff claims, is a company in the business of "earning wages" and should be permitted to deduct his or her "operating" costs (*i.e.* food, transportation, *etc.*) in the same manner that businesses deduct their operating expenses (*i.e.* advertising, rent *etc.*). As an individual whose constitutional rights have been violated by the alleged discrimination of the I.R.S., the plaintiff seeks the refund which he was denied by the I.R.S.

The defendant has filed a motion to dismiss the action. The plaintiff opposes the motion.

DISCUSSION

Dismissal of this action is appropriate because the plaintiff has failed to state a cause of action upon which relief can be granted. F.R.Civ.P. 12(b)(6). The Supreme Court has held that Equal Protection does not require identity of treatment under the tax code. *Walters v. City of St. Louis, Missouri*, 347 U.S. 231, 237 (1954). "It only requires that classification rest on real and not feigned differences, that the distinction have some relevance to the purpose for which the classification was made, and that the different treatments be not so disparate, relative to the difference in classification, as to be wholly arbitrary." *Id.*

All three of these factors are met in the instant case. First, there is a real difference between the taxing of individuals and the taxing of businesses. As the United States Tax Court has stated, "the sale of one's labor is not the same creature as the sale of property...One's gain, ergo his 'income,' from the sale of his labor is the entire amount received therefor without any reduction for what he spends to satisfy his human needs." *Reading v. Commissioner*, 70 T.C. 730 (1978), *aff'd*, 614 F.2d 159 (8th Cir. 1980). A business is a

"seeker after profit," while an individual is "a creature satisfying his needs." *U.S. v. Gilmore*, 372 U.S. 39, 44 (1962).

Second, the different tax treatment of individuals and businesses is relevant to the distinction between them. Since "[t]he sale of one's labor is not the same creature as the sale of property," it follows that individuals and businesses can be given different tax treatment. *Reading v. Commissioner*, 70 T.C. 730 (1978), *aff'd*, 614 F.2d 159 (8th Cir. 1980).

Finally, the different treatment is not so disparate, relative to the difference in classification, as to be wholly arbitrary. As the Supreme Court has stated: "[w]e cannot say that a difference in treatment of the taxpayers deriving income from these various sources [wage earners versus profit earners] is per se a prohibited discrimination. There is not so much similarity between them that they must be placed in precisely the same classification for tax purposes. *Walters v. City of St. Louis, Missouri*, 347 U.S. 231, 237 (1954).

The I.R.S. refusal to allow the plaintiff to deduct his basic living expenses from his income tax therefore does not violate the Equal Protection Clause of the U.S. Constitution. Accordingly, the defendant's motion to dismiss is hereby granted. IT IS SO ORDERED.

Dated: 7-24-90

s/J. Lawrence Irving
J. LAWRENCE IRVING,
JUDGE
UNITED STATES DISTRICT
COURT

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOHN C. GARRISON	)	
	)	
Plaintiff-Appellant	)	
	)	
v.	)	No. 90-56037
	)	D.C. No. 90-0264-JLI (CV)
UNITED STATES	)	
	)	FILED
Defendant-Appellee	)	APR 19, 1991
	)	CLERK

MEMORANDUM*

Appeal from the United States District Court
For the Southern District of California
J. Lawrence Irving, District Judge, Presiding

Submitted April 5, 1991**
Pasadena, California

Before: SCHROEDER, REINHARDT, Circuit Judges, and KING, Senior U.S. District Judge***

John Garrison appeals the District Court's dismissal of his action for a tax refund, pursuant to Fed. R. Civ. P. 12(b)(6). The Government seeks sanctions in the amount of $1500 against Garrison for bringing a frivolous appeal. We affirm the decision of the District

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a); 9th Cir. R. 34-4.

*** Honorable Samuel P. King, Senior U.S. District Judge for the District of Hawaii, sitting by designation.

Court and deny the Government's request for sanctions.

John Garrison timely filed his 1987 Federal Income Tax return and paid the tax which he computed to be due. He thereafter filed an amended tax return, in which he claimed additional deductions and sought a tax refund. Those deductions include basic support and subsistence costs such as food, shelter, health care and commuting costs to and from work. The I.R.S. denied the refund because the claimed deductions are disallowed by Congress under 26 U.S.C. § 262 and the administrative rules promulgated by the I.R.S.

Garrison then filed a *pro se* action for a refund in the United States District Court for the Southern District of California. He alleged that Congress violated the Equal Protection Clause when it enacted 26 U.S.C. § 262. He claimed that there is no rational basis for disallowing individuals the right to deduct their production costs from their gross income when computing their taxable income, while allowing businesses the right to make similar deductions under 26 U.S.C. § 162. Upon motion by the I.R.S., the District Court dismissed Garrison's claim pursuant to Fed. R. Civ. P. 12(b)(6). The District Court also held that Congress did not violate the Equal Protection Clause when it enacted 26 U.S.C. § 262.

We review *de novo* a District Court's dismissal of a taxpayer's suit for failure to state a claim upon which relief can be granted. *Grimes v. Commissioner*, 806 F.2d 1451, 1453 (9th Cir. 1986).

The Supreme Court has held that a classification giving different tax treatments to income derived from labor, and profit income derived from self employment does not violate the Equal Protection Clause. See *Walters v. City of St. Louis*, 347 U.S. 231 (1954). The Supreme Court said:

> Equal protection does not require identity of treatment. It only requires that classification rest on real

> and not feigned differences, that the distinction have some relevance to the purpose for which the classification is made, and that the different treatments be not so disparate, relative to the difference in classification, as to be wholly arbitrary. *Id.*, at 237.

In *Walters* the Supreme Court upheld the State classification, noting that affording incomes different tax treatments according to their sources as earned income or business profits is an extensive practice at the federal level. Such classifications do not systematically favor one type of income over the other and are not *per se* discriminatory. *Id.*, at 236. The Supreme Court also found that wage and salary incomes, and profits from self employment are not so similar as to require inclusion in precisely the same tax classification. *Id.*

Here, the District Court applied the *Walters* test to 26 U.S.C. § 262, and held that Congress did not violate the Equal Protection Clause when it enacted this section of the I.R.S. Code. The District Court found that individuals and businesses have "real and not feigned" differences. It further found that the difference in tax treatments is relevant to the differences between individuals and businesses. Finally, the District Court found that (1) a different tax treatment between wage and profit earners is not *per se* discriminatory, (2) there is not so much similarity between them as to require their inclusion in precisely the same tax classification, and (3) their different tax treatments are not so disparate as to be arbitrary. The District Court's holding was correct as a matter of law and we affirm.

The Government has requested that, pursuant to 28 U.S.C. § 1912[1] and Fed. R. App. P. 38,[2] we sanction Garrison in the amount of $1500 for bringing a frivolous appeal. Those provisions permit us to sanction

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[1] 28 U.S.C. § 1912 states: "Where a judgment is affirmed by...a court of appeals, the court in its discre-

litigants who bring appeals for the purpose of delay, or whose appeals are groundless. See *Grimes*, 806 F.2d at 1453-54.

Here, however, Garrison paid his taxes, then filed for a refund. He did not violate any laws, and never attempted to obstruct or delay the tax authorities. It is true that Garrison's appeal is devoid of merit. Nevertheless, his specific claim that Congress violated the Equal Protection Clause when it enacted 26 U.S.C. § 262 has never been rejected in this Circuit. Moreover, as the Government correctly points out, the idea of allowing some personal expenses to be deducted has already been accepted by Congress. See 26 U.S.C. §§ 163, 164 and 165(c). Garrison, a *pro se* litigant, was seeking peacefully to change the laws that govern him albeit in the wrong forum. As we said in *Grimes*: "We are sensitive to the obligation of the courts to provide access for petitioners seeking *in good faith* to avail themselves of the protection of the law...we are also aware that an appeal that lacks merit is not always frivolous." *Grimes*, 806 F.2d at 1454 (emphasis added). We do not find this appeal frivolous and deny the Government's request for sanctions.

AFFIRMED.

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tion may adjudge to the prevailing party just damages for his delay, and single and double costs."

[2] Fed. R. App. P. 38 states: "If a court of appeals shall determine that an appeal is frivolous, it may award just damages and single and double costs to the appellee."

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

John C. Garrison v. United States
Case No. 96 C 6659

DOCKET ENTRY ORDER

Date: December 20, 1996

Defendant's motion to dismiss is granted. Plaintiff's claim for a tax refund based upon expenditures for necessities of life is frivolous. *See* 26 U.S.C. Section 262; *Garrison v. United States*, 90-2 U.S.T.C. Par. 50, 431 (S.D. Cal. 1990), *aff'd*, 930 F.2d 920 (Table) 1991 WL 59431 (9th Cir. 1991). This case is dismissed with prejudice.

s/Suzanne B. Conlon
SUZANNE B. CONLON
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that three, true, and exact copies of the foregoing PETITION FOR EXTRAORDINARY WRIT have been forwarded by pre-paid certified mail to:

Solicitor General of the United States
Room 5614
Department of Justice
950 Pennsylvania Ave., NW
Washington, D.C. 20530-0001

On this _____ day of _____, 2001.

_____

John C. Garrison, in Pro Se
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Tallahassee, FL 32304
(850) 577-3002